IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3639 OF 2007

Farukh Kasamali Shaikh .... Petitioner

versus

Smt. Khatija Bibi Hussain Miya & ors.... Respondent.

Mr. Hateezum Rehman for the petitioner
Mr. Devendra Singh i/b Akhilesh Dube for Respondent no.6.

CORAM; A.P. DESHPANDE, J.
DATED; 16TH JULY, 2007

P.C.;

1. By the present writ petition, original plaintiff challenges an order passed by the trial court allowing an application moved by a third party for seeking impleadment under Order 1 Rule 10 of Civil Procedure Code. The trial court has categorically held that for complete adjudication of the issue in dispute, impleadment of a third party is necessary. Otherwise there cannot be an effective adjudication. The observation made by the trial court seems well founded in as much as the subject matter of suit is land admeasuring 1400 sq. mtrs. The plaintiff claims to have entered into an agreement with one Ibrahim Patel from Owe whereas the third party claims to have entered into an agreement for purchase of 1040 sq.

mtrs. of land from Ibrahim Patel from Taloja. He also claims to have purchased the balance land of 360 sq. mtrs. A decree has been passed in Special Civil Suit No. 62/04 by Civil Judge Senior Division, Panvel wherein the purchase claiming through Ibrahim Patel from Owe and the person with the same name i.e. Ibrahim Patel frrom Taloja were the parties. Perusal of the decree passed by the court reveals that a declaration has been made in favour of the plaintiffs in the said suit that they are the owners of the land admeasuring 1040 sq. mtrs. meaning thereby that the land was owned by Ibrahim Patel from Taloja. The third party, has purchased the land from the plaintiff in Specil Civil Suit No.62/04. If this be the position, then it is obvious that the third party has an interest in the suit property, and if not a necessary party, the third party is at least a proper party. As the trial court has found that the issue involved in the suit cannot be effectively and completely adjudicated in the absence of the third party, it has rightly allowed the application moved under Order 1 Rule 10, and directed impleadment of the third party as party defendant to the suit.

2. Perused the order. The same does not call for any interference. Hence the writ petition is summarily dismissed.

3. The learned counsel for the petiioner seeks stay of this order for four weeks. The prayer is rejected.

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